

CHAPTER 13 EMPLOYEES' COMPENSATION APPEALS BOARD

1300 THE BOARD

- 1300.1 The Employees' Compensation Appeals Board ("the Board"), is composed of three (3) members designated or appointed by the Mayor in accordance with §2344 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 ("the Act").
- 1300.2 One (1) of the members of the Board, designated by the Mayor, shall serve as Chairperson and Administrative Officer. The person so designated may, from time to time, designate such other member as Acting Chairperson and Administrative Officer.
- 1300.3 The Board shall establish and maintain an "Office of the Board" at such place as the Board shall, from time to time, designate.

1301 JURISDICTION

- 1301.1 The Board, acting as the Mayor's designee, has jurisdiction to review final decisions made pursuant to §2324(b) of the Act, for or against payment of disability compensation, as defined in §2301 of the Act, at any time on its own motion or on application.
- 1301.2 The Board, in accordance with the facts established by the record, may do either of the following:
- (a) End, decrease or increase the compensation previously awarded by the Department of Employment Services ("the Department") or its designee(s); or
 - (b) Award compensation previously refused or discontinued by the Department or its designee(s).
- 1301.3 The Board may evaluate all relevant evidence in the record which it determines is necessary or useful in reviewing final decision.

1302 SCOPE AND APPLICABILITY OF RULES

- 1302.1 The regulations in this chapter shall provide the rules of practice of the Board in reviewing final decisions made pursuant to chapter 1 of this title.

1303 PETITION FOR REVIEW

- 1303.1 Any employee adversely affected by a final decision issued under §2324(b) of the Act may file a petition for review of the decision with the Office of the Board.
- 1303.2 All Petitions for Review shall be filed with the Office of the Board at 950 Upshur Street, N.W., Washington, D.C. 20011.
- 1303.3 A Petition for Review shall be filed on a form approved by and available from the Office of the Board.
- 1303.4 Any petition made without the use of the form shall be typed double-spaced and shall contain the following information:
- (a) The full name and address of the petitioner;
 - (b) The name of the injured or decreased employee;
 - (c) The employing establishment;
 - (d) The case file number assigned to the case by the Division;
 - (e) A description of the particular injury involved;
 - (f) The final decision being appealed and its effective date;
 - (g) A statement of the action the petitioner would like the presiding official to order;
 - (h) Attachment of any relevant documents;
 - (i) If the applicant is being represented by another person in the proceeding, the name, address, and telephone number of that representative. If the applicant is represented by counsel, the attorney's bar number and jurisdiction should be indicated; and
 - (j) A succinct statement indicating the contentions of the petitioner and describing with particularity any finding of fact, conclusions of law, or exercise of (or failure to exercise) discretion complained of.
- 1303.5 Any petition containing incomplete information shall be returned to the petitioner with a description of the additional information needed and a reasonable opportunity for furnishing any such information shall be allowed.

1303 PETITION FOR REVIEW (Continued)

1303.6 Any Petition for Review shall be filed within thirty (30) days from the date of notification of the final decision made pursuant to §2324(b) of the Act, except that, for good cause shown, the Board may in its discretion waive a failure to file a petition within the thirty (30) day time limitation, but for no longer than (1) year from the date of issuance of an appealable decision.

1303.7 The date of filing a Petition for Review shall be the date upon which the petition is received in the Office of the Board.

1304 RESPONSE AND REPLY

1304.1 Responses to Petitions for Review may be filed with the Office of the Board. The response shall be typed double-spaced and filed as follows:

- (a) Within fifteen (15) days of receipt of the Petition for Review, if the Petition was served in person; or
- (b) Within eighteen (18) days of receipt of the Petition for Review, if the Petition was served by mail.

1304.2 Whenever a Response is filed, the Petitioner or his or her authorized representative may file a reply to the response.

1304.3 All Replies shall be typed double-spaced and filed with the Office of the Board, as follows:

- (a) Within ten (10) days of receipt of the Response, if the Response was served in person; or
- (b) Within eighteen (18) days of receipt of the Response, if the Response was served by mail.

1305 MOTIONS

1305.1 With the exception of motions made during oral argument before the Board, all motions shall be timely and reduced to writing.

1305.2 All motions shall be typed doubled-spaced and shall state the reasons why the motion is requested.

1305.3 Where written motions are submitted to the Board, all parties to the proceedings may file a written response to the motion, within the time limits prescribed for Replies, in §1303.7 of this chapter.

1305 MOTIONS (Continued)

- 1305.4 Oral motions may be made only during the course of oral argument before the Board, shall be timely and shall state the reasons for the motion.
- 1305.5 The presiding official may, in his or her discretion, grant or deny an oral motion at the time it is made and may allow all other parties to the proceeding such as the presiding official deems adequate to respond to the motion.
- 1305.6 Motions for extensions of any time limits set out in this chapter shall be granted only for good cause shown.

1306 BRIEFS AND SUPPORTING STATEMENTS

- 1306.1 Each Petition for Review, Response, Reply or motion may be accompanied by supporting memoranda, briefs or statements, typed doubled-spaced.
- 1306.2 The submissions shall be concise and to the point, and shall not exceed twenty (20) pages, unless prior approval for a lengthier submission has been obtained from the presiding official.

1307 PROOF OF SERVICE

- 1307.1 Each Petition for Review, Response, Reply, motion, brief, and supporting statement filed with the Board shall include a certification that copies have been served (delivered or mailed) on all parties to the proceeding.
- 1307.2 A Certificate of Service shall be proof that copies of papers have been served.
- 1307.3 The Certificate shall be in a form consistent with applicable provisions of the Superior Court Rules of Civil Procedure, and shall show the date, method and place of delivery.

1308 COPIES

- 1308.1 One (1) original and four (4) copies of each Petition, responsive pleading, motion, brief, or supporting statement shall be filed in the Office of the Board.

1309 TRANSMITTAL OF THE RECORD

- 1309.1 The Board shall by certified mail or personal service, deliver a copy of each Petition for Review and any motions, briefs, or supporting statements accompanying it to the Deputy.
- 1309.2 Within fifteen (15) days from the date of service, unless the time has been extended by the Board, the Deputy shall transmit to the Board the complete record of the hearing conducted unless §2324(b) of the Act, including findings of fact and conclusions of law made pursuant to §2324(a) of the Act, a copy of the recommendation of the hearing officer and a copy of the Deputy's final decision.

1310 DOCKET

- 1310.1 The Board shall maintain a docket of all proceedings.
- 1310.2 Each proceeding shall be assigned a number in chronological order according to the date that a Petition for Review is received or according to the date that the Board determines to review an award on its own motion.
- 1310.3 The Board shall generally consider each proceeding in the order in which it is docketed, although upon showing of good cause, the Board may, in its discretion, advance or delay the order in which a proceeding is to be considered.

1311 PROCEEDINGS BEFORE THE BOARD

- 1311.1 All proceedings before the Board shall be conducted by the Chairperson of the Board, or by a member delegated such duties by the Chair.
- 1311.2 The Chairperson or his or her designee, shall regulate all procedural matters, including the granting of continuances and acceptance of pleadings.
- 1311.3 During all proceedings, two (2) members of the Board shall constitute a quorum, except that all members may sit to hear and decide any matter.

1312 REPRESENTATION

- 1312.1 In any proceedings before the Board, a party may appear in person or be represented by counsel or any other person authorized by the party, including any accredited representative of an employee organization.

1312 REPRESENTATION (Continued)

1312.2 No person shall be recognized as a party's representative unless the party has filed with the Board a written request, signed by the party, for such representation and the Board has granted the request.

1312.3 The representative shall continue to be recognized throughout the proceedings unless one (1) of the following occurs:

- (a) The Board withdraws its consent;
- (b) The representative should withdrawn or abandon such capacity;
or
- (c) The party being represented directs otherwise.

1313 ORAL ARGUMENT

1313.1 The Board may, in its discretion, grant a party's request for an opportunity to present oral argument in support of a Petition for Review (including all Responses and Replies), or in support of a motion.

1313.2 If the request is granted, the Board shall schedule the case for argument and shall notify each party at least ten (10) days before the date of argument. The notice shall state the issues to be heard, as determined by the Board.

1313.3 Generally, not more than thirty (30) minutes shall be allowed for oral argument by any party in support of a Petition for Review, and not more than fifteen (15) minutes for argument in support of a motion. The Board may, in its discretion, extend or shorten the time allowed.

1313.4 The Board, in its discretion, may set the case for further argument upon notice or it may proceed to issue its order, pursuant to §1318.

1314 INTERVENTION

1314.1 The Board may permit any person or group of persons whose rights may be affected by a proceeding before the Board to intervene, whenever such persons show in a written Petition to Intervene that such rights are so affected.

1314.2 The Petition shall be typed, double-spaced, filed with the Board and served on all parties to the proceedings, and shall state specifically the rights being affected and the nature of all arguments the Petitioner intends to raise before the Board.

1314 INTERVENTION (Continued)

1314.3 Intervenors shall be considered full parties to the proceeding and shall have the same rights and duties as a party, with two (2) exceptions, as follows:

- (a) Intervenors have no independent rights to a review by the Board of a final decision; and
- (b) Intervenors' participation in a proceeding before the Board shall be limited to only those issues which may affect them, as determined by the presiding official.

1315 SUBSTITUTION

1315.1 If an employee dies or is unable to pursue his or her appeal, the proceeding shall be completed upon substitution of proper parties or by the representative of the original party.

1315.2 Substitution shall not be permitted where the interest of the original party has terminated, as determined by the presiding official.

1315.3 A motion for substitution shall be filed with the Office of the Board by the representative or proper party within fifteen (15) days of the disabling event.

1315.4 A motion shall state the reason for substitution and be verified by another appropriate document, as determined by the presiding official.

1316 JOINDER

1316.1 Joinder may occur where an employee has petitioned the Board for review of two (2) or more awards.

1316.2 The Board may order joinder of proceedings on its own motion or on the motion of a party if to do so would expedite the Board's review and not adversely affect the interest of the parties to the proceeding.

1317 STANDARD AND SCOPE OF REVIEW

1317.1 In reviewing awards and determinations, the Board shall sustain the final decision for the Deputy if the decision is not abusive of the Department's discretion and the final decision is supported by substantial evidence.

1317 STANDARD AND SCOPE OF REVIEW (Continued)

1317.2 For the purposes of this chapter, "substantial evidence" is defined as the degree of relevant evidence which a reasonable mind, considering the record as a whole, might accept as adequate to support a conclusion that the matter asserted is true.

1317.3 Even where the Deputy's final decision is supported by substantial evidence, the Board shall reverse or modify the Deputy's final decision in the following cases:

- (a) If harmful procedural error in the application of the Department's procedures in arriving at such final decision is demonstrated; or
- (b) If the final decision is not in accordance with Title XXIII of the Act or applicable rules and regulations.

1317.4 For the purposes of this chapter, "harmful procedural error" is error by the Department in the application of its procedures which, if cured, might have caused the Department to reach a final decision different than the one reached.

1317.5 In all proceedings before the Board, the employee shall have the burden of proof as to jurisdiction and timeliness.

1318 ORDERS OF THE BOARD

1318.1 The Board may affirm, reverse, remand, or modify final decisions made under §2324(b) of the Act or order any other appropriate action, as set out in §1301 of this chapter.

1318.2 The Board's disposition of all Petitions for Review shall be by written order, accompanied by a written opinion setting forth the reasons for the order.

1318.3 The Board's disposition of all other matters shall be in writing, except that rulings on motions made during oral argument need not be reduced to writing.

1318.4 The order of the Board shall be the final administrative decision for the District of Columbia, and shall be subject to review by the Superior Court of the District of Columbia, pursuant to §2328(b) of the Act.

1318.5 The order of the Board shall be in final thirty (30) days from the date of issuance unless the Board specifies a lesser period of time in its order or grants a petition for reconsideration.

1319**PETITION FOR RECONSIDERATION**

- 1319.1 A Petition for Reconsideration of an Order of the Board shall be filed with the Office of the Board within fifteen (15) days from the date of issuance of the Board's order or prior to the time that the Board's order becomes effective, whichever occurs first.
- 1319.2 The Petition for Reconsideration may be in letter form and shall state the ground relied upon, including any matters claimed to have been erroneously decided and shall specify the alleged errors, supported by reference to the record.
- 1319.3 The Board may reconsider with or without additional written or oral argument.
- 1319.4 If the Board requests additional written or oral argument, the Board shall set an expeditious schedule for the disposition of the matter.

1320**FEES**

- 1320.1 No claims for fees or other services rendered in respect to a proceeding before the Board to or on account of any person, shall be valid unless approved by the Board.
- 1320.2 No contract for a stipulated fee or for a fee on a contingent basis shall be recognized or approved by the Board.
- 1320.3 All claims for fees shall be supported by a sufficient statement of the extent and character of the work done before the Board on behalf of a party. Except where the representative is gratuitous, the fee approved by the Board shall be commensurate with the actual necessary work performed by a representative, taking into account the capacity in which the representative has appeared, the amount of the award, and the circumstances of the person being represented.

1399 DEFINITIONS

1399.1 The definitions set out in §2301 of Title XXIII of the District of Columbia Government Comprehensive Merit Personnel Act, (D.C. Law 2-139), shall apply to this chapter. In addition, for the purposes of this chapter, the following definitions shall apply:

Act - the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (D.C. Law 2-139), Title XXIII.

Administrative Officer - the Chairperson of the Board, who shall supervise its personnel and affairs, handle all administrative matters and exercise such other powers and duties as are necessary for the efficient functioning of the Board and the Office of the Board.

Award - the amount of compensation or any other benefits (payable from the Employees' Compensation Fund), finally determined as payable to an employee or to his or her beneficiary or estate, pursuant to §2324 of the Act.

Board - the Employees' Compensation Appeals Board.

Certification of Service - a statement by a party that copies of documents have been served (delivered or mailed to all other parties to proceedings before the Board.

Counsel - any person who is a member of good standing of the bar of the Supreme Court of the United States or the highest court of any State, territory or by the District of Columbia.

Day - calendar day, excluding, a District of Columbia holiday, Saturdays and Sundays.

Department - the Department of Employment Services, District of Columbia Government, or its duly authorized designee(s).

Deputy - the Deputy Director of Labor Standards, Department of Employment Services.

Determination - a final decision by the Deputy, made pursuant to §2324(b) of the Act, for or against payment of an award.

Division - the Public Sector Division of the Office of Workers' Compensation, Department of Employment Services.

Final Decision - a final disposition made by the Deputy pursuant to §2324(b) of the Act, for or against payment of an award.

Motion - a request to the presiding official to take a particular action.

Party - any individual admitted and named as a party on the docket of the Board, including intervenors.

1399 DEFINITIONS (Continued)

1399.1 (Continued)

Petition for Review - a request filed with the Office of the Board for a review of a final decision made pursuant to §2324(b) of the Act.

Petition for Reconsideration - a request filed with the Office of the Board for reconsideration of an Order of the Board.

Presiding Official - the Chairperson of the Board, or his or her designee, who conducts all proceedings before the Board.

Response - a formal, written document (described in §1304.1), filed with the Office of the Board in response to a Petition for Review.

Reply - a formal, written document (described in §1304.3), filed with the Office of the Board, in answer to a Response.

